

COPY

FILED

2011 OCT 31 PM 3:56

CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES, CA

1 PILLSBURY WINTHROP SHAW PITTMAN LLP  
2 REYNOLD L. SIEMENS #177956  
3 Email: [revnold.siemens@pillsburylaw.com](mailto:revnold.siemens@pillsburylaw.com)  
4 725 South Figueroa Street, Suite 2800  
5 Los Angeles, CA 90017-5406  
6 Telephone: (213) 488-7100  
7 Facsimile: (213) 629-1033

8 PILLSBURY WINTHROP SHAW PITTMAN LLP  
9 BRUCE A. ERICSON #76342  
10 Email: [bruce.ericson@pillsburylaw.com](mailto:bruce.ericson@pillsburylaw.com)  
11 MARLEY DEGNER #251923  
12 Email: [marley.degner@pillsburylaw.com](mailto:marley.degner@pillsburylaw.com)  
13 50 Fremont Street, Post Office Box 7880  
14 San Francisco, CA 94120-7880  
15 Telephone: (415) 983-1000  
16 Facsimile: (415) 983-1200

17 Attorneys for Defendant ROBERT JOHN BURRELL

18 UNITED STATES DISTRICT COURT  
19 CENTRAL DISTRICT OF CALIFORNIA  
20 WESTERN DIVISION

21 NATIONAL CREDIT UNION  
22 ADMINISTRATION BOARD AS  
23 LIQUIDATING AGENT FOR WESTERN  
24 CORPORATE FEDERAL CREDIT UNION,

25 Plaintiff,

26 vs.

27 ROBERT A. SIRAVO, TODD M. LANE,  
28 ROBERT J. BURRELL, THOMAS E.  
SWEDBERG, TIMOTHY T. SIDLEY,  
ROBERT H. HARVEY, JR., WILLIAM  
CHENEY, GORDON DAMES, JAMES P.  
JORDAN, TIMOTHY KRAMER, ROBIN J.  
LENTZ, JOHN M. MERLO, WARREN  
NAKAMURA, BRIAN OSBERG, DAVID  
RHAMY and SHARON UPDIKE,

Defendants.

No. CV 10-01597 GW (MANx)

AMENDED ANSWER AND  
COUNTERCLAIMS OF  
DEFENDANT ROBERT  
JOHN BURRELL; AND  
JURY DEMAND

[Amended Pursuant to Order  
Granting Stipulation to  
Amend/Correct, Doc. 183]

Answer & Counterclaims of Robert John Burrell,  
No. CV 10-01597 GW (MANX)

1 ROBERT JOHN BURRELL,

2 Counterclaimant,

3 vs.

4 NATIONAL CREDIT UNION  
5 ADMINISTRATION BOARD AS  
6 LIQUIDATING AGENT FOR WESTERN  
7 CORPORATE FEDERAL CREDIT UNION,

Counterdefendant.

8  
9 **AMENDED ANSWER TO COMPLAINT**

10 Defendant **ROBERT JOHN BURRELL** ("Burrell") hereby responds  
11 to the allegations of the Second Amended Complaint (the "SAC," Doc. 116)  
12 filed February 22, 2011 (numbered paragraphs of the SAC are referred to as  
13 "Paragraph \_\_") of plaintiff, the National Credit Union Administration Board  
14 as Liquidating Agent for Western Corporate Federal Credit Union ("NCUA"),  
15 as follows:

16 **JURISDICTION AND VENUE<sup>1</sup>**

17 1. Burrell admits that Western Corporate Federal Credit Union  
18 ("WesCorp") was a credit union with its corporate offices located in San  
19 Dimas, California. Burrell further admits, on information and belief, that the  
20 National Credit Union Administration Board placed WesCorp into  
21 conservatorship on March 19, 2009 and into involuntary liquidation on  
22 October 1, 2010. Burrell lacks knowledge or information sufficient to form a  
23 belief as to the truth of the remaining allegations of Paragraph 1 and on that  
24 basis denies those allegations.

25  
26  
27 <sup>1</sup> The headings in this answer follow (albeit not verbatim) those that appear in  
28 the SAC. The headings here in no sense admit anything but are included for  
the convenience of the reader.



1           10. Burrell admits that defendant Timothy T. Sidley ("Sidley") once  
2 served as Vice President for Risk Assessment and Chief Risk Officer in charge  
3 of Investment Credit Services of WesCorp. Burrell lacks knowledge or  
4 information sufficient to form a belief as to the truth of the remaining  
5 allegations of Paragraph 10 and on that basis denies those allegations.

6           11. Burrell admits that defendant Thomas E. Swedberg ("Swedberg")  
7 once served as Vice President of Human Resources and Vice President of  
8 Strategic Planning and Organizational Development of WesCorp. Burrell  
9 lacks knowledge or information sufficient to form a belief as to the truth of the  
10 remaining allegations of Paragraph 11 and on that basis denies those  
11 allegations.

12           12. Burrell admits that former defendant Robert H. Harvey, Jr.  
13 ("Harvey") was a director and was the Chairman of the WesCorp board of  
14 directors. Burrell lacks knowledge or information sufficient to form a belief  
15 as to the truth of the remaining allegations of Paragraph 12 and on that basis  
16 denies those allegations.

17           13. Burrell admits that former defendant James P. Jordan ("Jordan")  
18 was a member of the WesCorp board of directors and was the Vice Chairman  
19 of the WesCorp board. Burrell lacks knowledge or information sufficient to  
20 form a belief as to the truth of the remaining allegations of Paragraph 13 and  
21 on that basis denies those allegations.

22           14. Burrell admits that former defendant Timothy Kramer  
23 ("Kramer") was a member of the WesCorp board of directors and served as  
24 the Secretary and Treasurer of the WesCorp board. Burrell lacks knowledge  
25 or information sufficient to form a belief as to the truth of the remaining  
26 allegations of Paragraph 14 and on that basis denies those allegations.

27

28

1           15. Burrell admits that former defendant Robin J. Lentz ("Lentz")  
2 was a member of the WesCorp board of directors. Burrell lacks knowledge or  
3 information sufficient to form a belief as to the truth of the remaining  
4 allegations of Paragraph 15 and on that basis denies those allegations.

5           16. Burrell admits that former defendant John M. Merlo ("Merlo")  
6 was a member of the WesCorp board of directors. Burrell lacks knowledge or  
7 information sufficient to form a belief as to the truth of the remaining  
8 allegations of Paragraph 16 and on that basis denies those allegations.

9           17. Burrell admits that former defendant Gordon Dames ("Dames")  
10 was a member of the WesCorp board of directors. Burrell lacks knowledge or  
11 information sufficient to form a belief as to the truth of the remaining  
12 allegations of Paragraph 17 and on that basis denies those allegations.

13           18. Burrell admits that former defendant William Cheney ("Cheney")  
14 was a member of the WesCorp board of directors. Burrell lacks knowledge or  
15 information sufficient to form a belief as to the truth of the remaining  
16 allegations of Paragraph 18 and on that basis denies those allegations.

17           19. Burrell admits that former defendant Warren Nakamura  
18 ("Nakamura") was a member of the WesCorp board of directors. Burrell lacks  
19 knowledge or information sufficient to form a belief as to the truth of the  
20 remaining allegations of Paragraph 19 and on that basis denies those  
21 allegations.

22           20. Burrell admits that former defendant Brian Osberg ("Osberg")  
23 was a member of the WesCorp board of directors. Burrell lacks knowledge or  
24 information sufficient to form a belief as to the truth of the remaining  
25 allegations of Paragraph 20 and on that basis denies those allegations.

26           21. Burrell admits that former defendant David Rhamy ("Rhamy")  
27 was a member of the WesCorp board of directors. Burrell lacks knowledge or  
28

1 information sufficient to form a belief as to the truth of the remaining  
2 allegations of Paragraph 21 and on that basis denies those allegations.

3 22. Burrell admits that former defendant Sharon Updike (“Updike”)  
4 was a member of the WesCorp board of directors. Burrell lacks knowledge or  
5 information sufficient to form a belief as to the truth of the remaining  
6 allegations of Paragraph 22 and on that basis denies those allegations.

7 23. Burrell admits that several of the Director Defendants<sup>2</sup> were  
8 members of WesCorp’s Asset and Liability Committee (“ALCO”), budget  
9 committee, compensation committee or other committees. Burrell lacks  
10 knowledge or information sufficient to form a belief as to the truth of the  
11 remaining allegations of Paragraph 23 and on that basis denies those  
12 allegations.

13 24. Burrell admits that WesCorp had a detailed set of corporate  
14 policies, which speak for themselves. Burrell lacks knowledge or information  
15 sufficient to form a belief as to the remaining allegations of Paragraph 24 and  
16 on that basis denies those allegations.

17 25. Burrell admits that WesCorp had a detailed set of corporate  
18 policies, which speak for themselves and which defined the role of the ALCO.  
19 Burrell lacks knowledge or information sufficient to form a belief as to the  
20 remaining allegations of Paragraph 25 and on that basis denies those  
21 allegations.

22 26. Burrell admits that many WesCorp board members regularly  
23 attended ALCO meetings and that he regularly made presentations at ALCO  
24 meetings. Burrell lacks knowledge or information sufficient to form a belief  
25

26  
27 <sup>2</sup> Burrell uses the term “Director Defendants” as used in the SAC to refer to  
28 former defendants Harvey, Merlo, Dames, Jordan, Kramer, Cheney, Lentz,  
Nakamura, Osberg, Rhamy and Updike.

1 as to the truth of the remaining allegations of Paragraph 26 and on that basis  
2 denies those allegations.

3 27. Burrell admits that WesCorp had a budget committee, which  
4 reviewed and had the power to accept or reject WesCorp's annual budget  
5 before sending the budget to the full board for its consideration. Burrell lacks  
6 knowledge or information sufficient to form a belief as to the truth of the  
7 remaining allegations of Paragraph 27 and on that basis denies them.

8 28. Paragraph 28 contains legal conclusions, to which no response is  
9 required. To the extent the allegations require a response, they are denied.

10 29. Paragraph 29 contains legal conclusions, to which no response is  
11 required. To the extent the allegations require a response, they are denied.

12 **SUMMARY OF CLAIMS**

13 30. Burrell admits that WesCorp was a non-profit corporate credit  
14 union run for the benefit of its members, who were themselves credit unions,  
15 and that WesCorp provided its members with banking and investment  
16 services. The remaining allegations of Paragraph 30 contain legal  
17 conclusions, to which no response is required. To the extent the allegations  
18 require a response, they are denied.

19 31. Burrell admits that WesCorp was a corporate federal credit union  
20 and provided its members with banking and investment services. Burrell  
21 admits that Siravo once served as President and CEO of WesCorp. Burrell  
22 lacks knowledge or information sufficient to form a belief as to the truth of the  
23 remaining allegations of Paragraph 31, and on that basis denies those  
24 allegations.

25 32. Burrell admits that WesCorp invested its members' funds in  
26 securities, including private label mortgage backed securities ("MBS"), and  
27 that the NCUA and WesCorp's members knew on a timely basis what kinds of  
28

1 investments WesCorp had made. Burrell lacks knowledge or information  
2 sufficient to form a belief as to the remaining allegations of Paragraph 32 and  
3 on that basis denies those allegations.

4 33. Burrell lacks knowledge or information sufficient to form a belief  
5 as to the truth of the allegations of Paragraph 33 and on that basis denies those  
6 allegations.

7 34. Burrell avers that WesCorp primarily used the income from its  
8 investments to increase the return to members on their invested funds and to  
9 decrease the amount WesCorp charged members for the services it rendered to  
10 them. Burrell lacks knowledge or information sufficient to form a belief as to  
11 the truth of the allegations of Paragraph 34 and on that basis denies those  
12 allegations.

13 35. Burrell lacks knowledge or information sufficient to form a belief  
14 as to the truth of allegations of Paragraph 35 and on that basis denies those  
15 allegations.

16 36. Burrell admits that WesCorp invested in private label MBS,  
17 including MBS based on Option ARM loans. Burrell lacks knowledge or  
18 information sufficient to form a belief as to the truth of the remaining  
19 allegations of Paragraph 36 and on that basis denies those allegations.

20 37. Burrell denies the allegations of Paragraph 37.

21 38. Burrell admits that WesCorp invested in private label MBS,  
22 including MBS based on Option ARM loans. Burrell lacks knowledge or  
23 information sufficient to form a belief as to the remaining allegations of  
24 Paragraph 38 and on that basis denies those allegations.

25 39. Burrell admits, on information and belief, that the MBS loans that  
26 WesCorp purchased for investment were rated AAA or at least AA by  
27 Moody's and S&P, or both, and were underwritten by the world's leading  
28

1 investment banks. Burrell lacks knowledge or information sufficient to form a  
2 belief as to the truth of the remaining allegations of Paragraph 39 and on that  
3 basis denies those allegations.

4 40. Burrell lacks knowledge or information to form a belief as to the  
5 truth of the allegations regarding WesCorp's 2009 recorded losses, and on that  
6 basis denies them, except to the extent they reference the contents of  
7 WesCorp's 2009 financial statements, which speak for themselves and which  
8 were largely based on assumptions, forecasts and models imposed on  
9 WesCorp by the NCUA. Burrell refers to WesCorp's 2009 financial  
10 statements for their contents and denies any characterization inconsistent with  
11 their terms. Burrell lacks knowledge or information sufficient to form a belief  
12 as to the truth of the remaining allegations of Paragraph 40 and on that basis  
13 denies those allegations.

14 41. Burrell lacks knowledge or information sufficient to form a belief  
15 as to the truth of the allegations of Paragraph 41, and on that basis denies those  
16 allegations.

17 42. Burrell lacks knowledge or information sufficient to form a belief  
18 as to the truth of the allegations of Paragraph 42 and on that basis denies those  
19 allegations.

20 43. Paragraph 43 contains legal conclusions, to which no response is  
21 required. To the extent they require a response, Burrell denies the allegations  
22 about himself and lacks information or knowledge sufficient to form a belief  
23 as to the truth of the allegations of Paragraph 43 about others and on that basis  
24 denies those allegations.

25  
26  
27  
28

**FACTUAL ALLEGATIONS**

**The Federal Credit Union System**

44. Burrell admits, on information and belief, that the federal credit union system is a three-tier system consisting of (1) one wholesale corporate credit union (U.S. Central Federal Credit Union); (2) retail corporate credit unions; and (3) "natural person" credit unions. Burrell further admits, on information and belief, that the wholesale corporate credit union, "U.S. Central," provides services to the retail corporate credit unions, while the retail corporate credit unions provide services to both federally-chartered and state-chartered natural person credit unions. Burrell lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 44 and on that basis denies them.

45. Burrell admits, on information and belief, that WesCorp was a retail corporate credit union. Burrell lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 45 and on that basis denies those allegations.

46. Burrell admits, on information and belief, that corporate credit unions are not-for-profit institutions owned by their members and that in the case of retail corporate credit unions, the members are primarily natural person credit unions.

47. Burrell admits, on information and belief, that retail corporate credit unions provide services and support to their natural person credit union members. Burrell admits, on information and belief, that retail corporate credit unions offer their natural person credit unions banking and investment products and services, and that these products and services may include settlement of transactions such as checks, ATM and credit card transactions and wire transfers. Burrell lacks knowledge or information sufficient to form

1 a belief as to the truth of the remaining allegations of Paragraph 47 and on that  
2 basis denies those allegations.

3 48. Burrell avers that the NCUA and WesCorp's members knew,  
4 approved of and encouraged WesCorp's investment strategy, including  
5 without limitation its attempts to obtain higher returns on members'  
6 investments than could be obtained through investing solely or predominantly  
7 in MBS issued by government agencies such as Fannie Mae and Freddie Mac  
8 ("agency MBS"). Burrell lacks knowledge or information sufficient to form a  
9 belief as to the truth of the allegations regarding alleged statements from  
10 WesCorp's website, and on that basis denies them, except to the extent they  
11 reference the contents of WesCorp's website, which speaks for itself. Burrell  
12 refers to WesCorp's website for its contents and denies any characterization  
13 inconsistent with its terms. Burrell lacks knowledge or information sufficient  
14 to form a belief as to the truth of the remaining allegations of Paragraph 48  
15 and on that basis denies those allegations.

16 49. Burrell lacks knowledge or information sufficient to form a belief  
17 as to the truth of the allegations regarding alleged statements from WesCorp's  
18 bylaws, and on that basis denies them, except to the extent they reference the  
19 contents of WesCorp's bylaws, which speak for themselves. Burrell refers to  
20 WesCorp's bylaws for their contents and denies any characterization  
21 inconsistent with their terms. Burrell lacks knowledge or information  
22 sufficient to form a belief as to the truth of the remaining allegations of  
23 Paragraph 49 and on that basis denies those allegations.

24 50. Burrell admits, on information and belief, that corporate credit  
25 unions invest the assets of their natural person credit union members, when  
26 requested to do so by their members, and provide banking and investment  
27 services to their members. Burrell lacks knowledge or information sufficient  
28

1 to form a belief as to the truth of the allegations of Paragraph 50 and on that  
2 basis denies those allegations.

3 51. Burrell admits, on information and belief, that WesCorp provided  
4 services and liquidity to its credit union members and that many of the  
5 members of WesCorp's board of directors were CEOs of natural person credit  
6 unions that were members of WesCorp. Burrell lacks knowledge or  
7 information sufficient to form a belief as to the truth of the remaining  
8 allegations of Paragraph 51 and on that basis denies them.

9 **The Officer Defendants' Responsibilities and Duties**

10 52. Burrell lacks knowledge or information sufficient to form a belief  
11 as to the truth of the allegations regarding alleged statements from WesCorp's  
12 bylaws and policies, and on that basis denies them, except to the extent they  
13 reference the contents of WesCorp's bylaws and policies, which speak for  
14 themselves. Burrell refers to WesCorp's bylaws and policies for their contents  
15 and denies any characterization inconsistent with their terms. Burrell lacks  
16 knowledge or information sufficient to form a belief as to the truth of the  
17 remaining allegations of Paragraph 52 and on that basis denies those  
18 allegations.

19 53. Burrell admits that Siravo once served as President and CEO of  
20 WesCorp. Burrell lacks knowledge or information sufficient to form a belief  
21 as to the truth of the remaining allegations of Paragraph 53 and on that basis  
22 denies those allegations.

23 54. Paragraph 54 contains legal conclusions, to which no response is  
24 required. To the extent the allegations require a response, they are denied.

25 55. Burrell admits that Lane once served as Chief Financial Officer  
26 of WesCorp. Burrell lacks knowledge or information sufficient to form a  
27  
28

1 belief as to the truth of the remaining allegations of Paragraph 55 and on that  
2 basis denies those allegations.

3       56. Burrell admits that he once served as Chief Investment Officer  
4 for WesCorp, supervised its Investment Department and, as such, had  
5 responsibility for day-to-day management of the balance sheet, investment  
6 strategies, liquidity and interest rate risk. Burrell is informed and believes and  
7 on that basis avers that the NCUA approved of – and indeed required – that  
8 WesCorp separate the credit risk management function from the interest rate  
9 and liquidity risk taking and investment functions, and make the credit risk  
10 management function a stand-alone unit, independent of the risk taking or  
11 investment function. *See* NCUA, OCCU, Guidelines for Submission of  
12 Requests for Expanded Authority Under the Provisions of Appendix B, Part  
13 704, NCUA Rules and Regulations (Oct. 17, 2002). Accordingly, Burrell had  
14 no duty to perform the credit risk management function and by regulation,  
15 policy and practice was prohibited from active participation in any credit  
16 related decisions. Burrell denies that he had responsibility for credit risk  
17 management. Burrell avers that WesCorp's policies, which speak for  
18 themselves, specified his duties. The remaining allegations of Paragraph 56  
19 are legal conclusions, to which no response is required. To the extent the  
20 allegations require a response, they are denied.

21       57. Burrell denies the allegations of Paragraph 57.

22       58. Burrell lacks knowledge or information sufficient to form a belief  
23 as to the truth of the allegations of Paragraph 58 and on that basis denies those  
24 allegations.

25       59. Burrell admits that WesCorp at some time in the late 1990's  
26 formed an Asset/Liability Staff Committee ("ALSC"), which reviewed  
27 balance sheet management and investment strategy, among other matters,  
28

1 which was in turn reviewed by the ALCO. Burrell denies the remaining  
2 allegations of Paragraph 59.

3 60. Burrell admits that he was a voting member of the ALSC and  
4 ALCO. Burrell lacks knowledge or information sufficient to form a belief as  
5 to the truth of the allegations in the second sentence of Paragraph 60 and on  
6 that basis denies those allegations. The remaining allegations of Paragraph 60  
7 are legal conclusions, to which no response is required. To the extent the  
8 allegations require a response, they are denied.

9 **WesCorp's Growth**

10 61. Burrell avers that in the period before 1997, the NCUA  
11 disapproved of WesCorp's management and strategies, and in particular told  
12 WesCorp that it incurred excessive interest rate risk. Burrell lacks knowledge  
13 or information sufficient to form a belief as the truth of the allegations of  
14 Paragraph 61 and on that basis denies those allegations.

15 62. Burrell admits that Siravo once served as President and CEO of  
16 WesCorp. Burrell denies that WesCorp adopted aggressive plans or strategies  
17 after 2002. Burrell lacks knowledge or information sufficient to form a belief  
18 as to the remaining allegations of Paragraph 62 and on that basis denies those  
19 allegations.

20 63. Burrell lacks knowledge or information sufficient to form a belief  
21 as to the truth of the allegations of Paragraph 63 and on that basis denies those  
22 allegations.

23 64. Burrell lacks knowledge or information sufficient to form a belief  
24 as to the truth of the allegations of Paragraph 64 and on that basis denies those  
25 allegations.

26

27

28

1           65. Burrell lacks knowledge or information sufficient to form a  
2 belief as to the truth of the allegations of Paragraph 65 and on that basis denies  
3 those allegations.

4           66. Burrell lacks knowledge or information sufficient to form a belief  
5 as to the truth of the allegations of Paragraph 66 and on that basis denies those  
6 allegations.

7           67. Burrell admits that for a period of time, private label MBS were  
8 typically higher-yielding than agency MBS. Burrell further admits that  
9 WesCorp invested in MBS, including private label MBS. Burrell lacks  
10 knowledge or information sufficient to form a belief as to the truth of the  
11 remaining allegations of Paragraph 67 and on that basis denies those  
12 allegations.

13           68. Burrell lacks knowledge or information sufficient to form a belief  
14 as to the truth of the allegations regarding alleged statements from WesCorp's  
15 policies, and on that basis denies them, except to the extent they reference the  
16 contents of WesCorp's policies, which speak for themselves. Burrell refers to  
17 WesCorp's policies for their contents and denies any characterization  
18 inconsistent with their terms. Burrell avers that the NCUA by and large  
19 approved of WesCorp's capital goals and that, to the extent that the NCUA  
20 suggested changes in those goals, WesCorp made the suggested changes.  
21 Burrell lacks knowledge or information sufficient to form a belief as to the  
22 truth of the allegations of Paragraph 68 and on that basis denies those  
23 allegations.

24           69. Burrell avers that WesCorp primarily used the income from  
25 members' investments to benefit members, by offering them a higher return on  
26 their investments, or lower charges for services, or both. Burrell lacks  
27  
28

1 knowledge or information sufficient to form a belief as to the truth of the  
2 allegations of Paragraph 69 and on that basis denies those allegations.

3 70. Burrell lacks knowledge or information sufficient to form a belief  
4 as to the truth of the allegations of Paragraph 70 and on that basis denies those  
5 allegations.

6 **WesCorp's Private Label MBS Investments**

7 71. Burrell lacks knowledge or information sufficient to form a belief  
8 as to the truth of the allegations of Paragraph 71 and on that basis denies those  
9 allegations.

10 72. Burrell lacks knowledge or information sufficient to form a belief  
11 as to the truth of the allegations of Paragraph 72 and on that basis denies those  
12 allegations.

13 73. Burrell admits that WesCorp invested in AAA-rated and AA-  
14 rated private label MBS. Burrell avers that the NCUA gave WesCorp special  
15 permission to invest in much lower rated securities, which authority WesCorp  
16 did not use. Burrell also avers that the NCUA's regulations and WesCorp's  
17 policies speak for themselves. Burrell lacks knowledge or information  
18 sufficient to form a belief as to the truth of the remaining allegations of  
19 Paragraph 73 and on that basis denies those allegations.

20 74. Burrell admits that until mid 2007 WesCorp invested in AAA-  
21 rated private label MBS, including Option ARM MBS. Burrell admits that  
22 WesCorp also invested in Collateralized Debt Obligations ("CDOs"), which  
23 are not MBS but multi-class assets that can include MBS along with other  
24 types of collateral. Burrell lacks knowledge or information sufficient to form  
25 a belief as to the truth of the remaining allegations of Paragraph 74 and on that  
26 basis denies those allegations.

27

28

1           75. Burrell admits that WesCorp also invested in CDOs, which are  
2 not MBS but multi-class assets that can include MBS along with other types of  
3 collateral, and denies that all the CDOs in which WesCorp invested were  
4 backed solely by pools of MBS. The remaining allegations of Paragraph 75  
5 are legal conclusions, to which no response is required. To the extent the  
6 allegations require a response, they are denied.

7           76. Burrell admits that WesCorp purchased CDOs. Burrell lacks  
8 knowledge or information sufficient to form a belief as to the truth of the  
9 remaining allegations of Paragraph 76 and on that basis denies those  
10 allegations.

11          77. Burrell admits that Option ARM MBS are ownership interests in  
12 pools of Option ARM mortgages. Burrell further admits, on information and  
13 belief, that in some instances the monthly payments due on Option ARM  
14 mortgages could be adjusted, at the mortgagee's option, and sometimes reset  
15 in accordance with the terms of the mortgage. Burrell lacks knowledge or  
16 information sufficient to form a belief as to the remaining allegations of  
17 Paragraph 77 and on that basis denies those allegations.

18          78. Burrell denies that through mid 2007 all reduced documentation  
19 (or "Alt-A") mortgage loans were commonly called "liar loans" and avers that  
20 he and many people regarded some reduced documentation loans as only  
21 slightly riskier than "prime" or "conforming" mortgages, and less risky than  
22 "subprime" mortgages. Burrell lacks knowledge or information sufficient to  
23 form a belief as to the truth of the allegations of Paragraph 78 and on that basis  
24 denies those allegations.

25          79. Burrell denies that through mid 2007 he or many people regarded  
26 all Alt-A loans as inherently risky and avers that he and many people regarded  
27 some reduced documentation loans as only slightly riskier than "prime" or  
28

1 “conforming” mortgages, and less risky than “subprime” mortgages. Burrell  
2 lacks knowledge or information sufficient to form a belief as to the truth of the  
3 allegations of Paragraph 79 and on that basis denies those allegations.

4 80. Burrell admits that WesCorp invested in Option ARM MBS.  
5 Burrell lacks knowledge or information sufficient to form a belief as to the  
6 truth of the remaining allegations of Paragraph 80 and on that basis denies  
7 those allegations.

8 81. Burrell admits that WesCorp purchased certain MBS from  
9 tranches other than the very highest tranches but denies that he or others  
10 regarded these tranches of loans – which were many levels senior to the much  
11 lower tranches that the NCUA gave WesCorp permission to buy – as unduly  
12 risky. Burrell further admits, on information and belief, that tranches below  
13 the very highest tranches generally pay a higher yield than do the very highest  
14 tranches. Burrell lacks knowledge or information sufficient to form a belief as  
15 to the truth of the remaining allegations of Paragraph 81 and on that basis  
16 denies those allegations.

17 82. Burrell admits that WesCorp invested in some AA-rated MBS  
18 through 2006 but not thereafter. Burrell avers that the NCUA gave WesCorp  
19 special permission, through “Expanded Authorities,” to invest in securities  
20 rated many levels below AA but that WesCorp chose not to invest in such  
21 lower rated securities. Burrell lacks knowledge or information sufficient to  
22 form a belief as to the truth of the remaining allegations of Paragraph 82 and  
23 on that basis denies those allegations.

24 83. Burrell lacks knowledge or information sufficient to form a belief  
25 as to the truth of the allegations of Paragraph 83 and on that basis denies those  
26 allegations.

27

28

1           84. Burrell denies that WesCorp invested in the tranches most likely  
2 to suffer losses or in anything close to that risky. Burrell avers that the NCUA  
3 gave WesCorp special permission to invest in securities rated many levels  
4 below AAA and indeed below AA but that WesCorp chose not to invest in  
5 such lower rated securities. Burrell lacks knowledge or information sufficient  
6 to form a belief as to the truth of the remaining allegations of Paragraph 84  
7 and on that basis denies those allegations.

8                                   **WesCorp's Budgets**

9           85. Burrell admits that every year WesCorp's management and board  
10 of directors went through a months-long process to create a budget for the next  
11 year. Burrell admits that his Investment Department provided some of the  
12 inputs for that budget process, including detailed assumptions and projections  
13 regarding balances, investment income, cost of funds and net interest income.  
14 Burrell lacks knowledge or information sufficient to form a belief as to the  
15 truth of the remaining allegations of Paragraph 85 and on that basis denies  
16 those allegations.

17           86. Paragraph 86 contains legal conclusions, to which no response is  
18 required. To the extent the allegations require a response, Burrell denies the  
19 allegations about himself and lacks knowledge or information sufficient to  
20 form a belief as to the truth of the allegations of Paragraph 86 about others and  
21 on that basis denies those allegations.

22           87. Paragraph 87 contains legal conclusions, to which no response is  
23 required. To the extent the allegations require a response, Burrell lacks  
24 knowledge or information sufficient to form a belief as to the truth of the  
25 allegations of Paragraph 87 and on that basis denies those allegations.

26           88. Burrell lacks knowledge or information sufficient to form a belief  
27 as to the truth of the allegations of Paragraph 88 and on that basis denies those  
28

1 allegations, except to the extent they reference the contents of WesCorp's  
2 budgets, which speak for themselves. Burrell refers to WesCorp's budgets for  
3 their contents and denies any characterization inconsistent with their terms.

4 89. Burrell admits that the return WesCorp earned on its investment  
5 portfolio affected WesCorp's investment income: this is tautologically true.  
6 Burrell denies the remaining allegations of Paragraph 89, including but not  
7 limited to any implication that WesCorp took imprudent investment risks for  
8 the sake of achieving the goals set by budgets.

9 90. Burrell denies that the 2007 budget, or any WesCorp budget,  
10 "mandated" or required anything; rather, budgets set goals, which might or  
11 might not be abandoned, achieved or modified as circumstances warranted.  
12 Burrell lacks knowledge or information sufficient to form a belief as to the  
13 truth of the allegations of Paragraph 90 and on that basis denies those  
14 allegations, except to the extent they reference the contents of WesCorp's  
15 budgets, which speak for themselves. Burrell refers to WesCorp's budgets for  
16 their contents and denies any characterization inconsistent with their terms.

17 91. Burrell denies the allegations of Paragraph 91, including but not  
18 limited to any implication that he or the Investment Department ever ensured  
19 or guaranteed any particular level of income, or took imprudent investment  
20 risks for the sake of achieving the goals set by budgets.

21 92. Burrell lacks knowledge or information sufficient to form a belief  
22 as to the truth of the allegations of Paragraph 92 and on that basis denies those  
23 allegations.

24 93. Burrell lacks knowledge or information sufficient to form a belief  
25 as to the truth of the allegations of Paragraph 93 and on that basis denies those  
26 allegations.

27

28

1           94. Burrell lacks knowledge or information sufficient to form a belief  
2 as to the truth of the allegations of Paragraph 94, and on that basis denies those  
3 allegations, except to the extent they reference the contents of WesCorp's  
4 budgets, which speak for themselves. Burrell refers to WesCorp's budgets for  
5 their contents and denies any characterization inconsistent with their terms.

6           95. Burrell denies the allegations of Paragraph 95.

7           96. Burrell admits that in 2005 and 2006 he knew that the spreads  
8 between the returns on agency MBS and the returns on private label MBS,  
9 while fluctuating, generally were narrowing and that, at virtually every ALCO  
10 meeting, spreads (among many other things) were discussed. The fact that  
11 spreads on private label MBS were narrowing, in and of itself, suggests that  
12 credit concerns by the majority of investors about the potential impact of a  
13 deterioration in housing market on highly rated MBS were not unduly  
14 heightened at that time. Burrell lacks knowledge or information sufficient to  
15 form a belief as to the truth of the remaining allegations of Paragraph 96 and  
16 on that basis denies those allegations.

17           97. Burrell lacks knowledge or information sufficient to form a belief  
18 as to the truth of the allegations of Paragraph 97 and on that basis denies those  
19 allegations, except to the extent they reference the contents of WesCorp's  
20 ALCO books, which speak for themselves. Burrell refers to WesCorp's  
21 ALCO books for their contents and denies any characterization inconsistent  
22 with their terms.

23           98. Burrell admits that in 2005 and 2006 he knew that the spreads  
24 between the returns on agency MBS and the returns on private label MBS,  
25 while fluctuating, generally were narrowing. Burrell denies the remaining  
26 allegations of Paragraph 98.

27

28

1           99. Burrell avers that in 2005 and 2006 he knew that the spreads  
2 between the returns on agency MBS and the returns on private label MBS,  
3 while fluctuating, generally were narrowing. Burrell lacks knowledge or  
4 information sufficient to form a belief as to the truth of the allegations of  
5 Paragraph 99 and on that basis denies those allegations.

6           100. Paragraph 100 contains legal conclusions, to which no response is  
7 required. To the extent the allegations require a response, Burrell denies those  
8 allegations.

9           101. Paragraph 101 contains legal conclusions, to which no response is  
10 required. To the extent the allegations require a response, Burrell lacks  
11 knowledge or information sufficient to form a belief as to the truth of the  
12 allegations of Paragraph 101 and on that basis denies those allegations.

13           102. Paragraph 102 contains legal conclusions, to which no response is  
14 required. To the extent the allegations require a response, Burrell lacks  
15 knowledge or information sufficient to form a belief as to the truth of the  
16 allegations of Paragraph 102 and on that basis denies those allegations.

17           103. Paragraph 103 contains legal conclusions, to which no response is  
18 required. To the extent the allegations require a response, Burrell denies those  
19 allegations.

20           104. Burrell denies the allegations of Paragraph 104.

21                                   **MBS Concentration**

22           105. Paragraph 105 contains legal conclusions, to which no response is  
23 required. To the extent the allegations require a response, Burrell admits that  
24 the NCUA had regulations, which speak for themselves. Burrell lacks  
25 knowledge or information sufficient to form a belief as to the truth of the  
26 remaining allegations of Paragraph 105 and on that basis denies those  
27 allegations.

28

1           106. Burrell lacks knowledge or information sufficient to form a belief  
2 as to the truth of the allegations of Paragraph 106 and on that basis denies  
3 those allegations.

4           107. Burrell admits that WesCorp provided services to its members,  
5 including investing their funds if requested to do so. Burrell lacks knowledge  
6 or information sufficient to form a belief as to the truth of the remaining  
7 allegations of Paragraph 107 and on that basis denies those allegations.

8           108. Burrell admits that WesCorp's board had responsibility for  
9 setting investment policies. Burrell admits that WesCorp had many  
10 investment policies, which speak for themselves. Burrell lacks knowledge or  
11 information sufficient to form a belief as to the truth of the remaining  
12 allegations of Paragraph 108 and on that basis denies those allegations.

13           109. Burrell admits that WesCorp's ALCO Committee had  
14 responsibility for overseeing corporate policies, including those related to  
15 investment activities and credit risk management. Burrell admits that  
16 WesCorp had many investment policies, which speak for themselves. Burrell  
17 lacks knowledge or information sufficient to form a belief as to the truth of the  
18 remaining allegations of Paragraph 109 and on that basis denies those  
19 allegations.

20           110. Burrell admits that Sidley headed WesCorp's Risk Assessment  
21 Department. Burrell admits that he headed WesCorp's Investment  
22 Department. Burrell admits that the Investment Department would suggest  
23 certain concentration limits, based largely on the size of WesCorp's balance  
24 sheet, to WesCorp's Investment Credit Services Department, which in turn  
25 would exercise its own independent judgment and then recommend  
26 concentration limits to WesCorp's ALCO and board. Burrell lacks knowledge  
27  
28

1 or information sufficient to form a belief as to the truth of the remaining  
2 allegations of Paragraph 110 and on that basis denies those allegations.

3 111. Burrell admits that WesCorp's board adopted policies specifying  
4 concentration limits for its investment securities and from time to time  
5 amended the policies to change limits or impose new limits, which policies  
6 and which amendments speak for themselves. Burrell lacks knowledge or  
7 information sufficient to form a belief as to the truth of the remaining  
8 allegations of Paragraph 111 and on that basis denies those allegations.

9 112. Burrell admits that the Investment Department would suggest  
10 certain concentration limits, based largely on WesCorp's balance sheet rather  
11 than on its budget or projected investment yields, to WesCorp's Investment  
12 Credit Services Department, which in turn would exercise its own independent  
13 judgment and then recommend concentration limits to WesCorp's ALCO and  
14 board. Burrell lacks knowledge or information sufficient to form a belief as to  
15 the truth of the remaining allegations of Paragraph 112 and on that basis  
16 denies them.

17 113. Paragraph 113 contains legal conclusions, to which no response is  
18 required. To the extent the allegations require a response, Burrell lacks  
19 knowledge or information sufficient to form a belief as to the truth of the  
20 allegations of Paragraph 113 and on that basis denies those allegations.

21 114. Paragraph 114 contains legal conclusions, to which no response is  
22 required. To the extent the allegations require a response, Burrell admits that  
23 WesCorp purchased AAA-rated private label MBS. Burrell lacks knowledge  
24 or information sufficient to form a belief as to the truth of the remaining  
25 allegations of Paragraph 114 and on that basis denies those allegations.

26  
27  
28

**Option ARM MBS**

115. Burrell lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 115 and on that basis denies those allegations, except to the extent they reference the contents of WesCorp's corporate policies, which speak for themselves. Burrell refers to WesCorp's corporate policies for their contents and denies any characterization inconsistent with their terms.

116. Burrell admits that WesCorp purchased Option ARM MBS. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 116 and on that basis denies those allegations.

117. Burrell denies that Option ARM MBS was a "new" type of security within the meaning of WesCorp's policies. Burrell denies the remaining allegations of Paragraph 117.

118. Burrell denies that Option ARM MBS was a "new" type of security within the meaning of WesCorp's policies. Burrell lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 118 and on that basis denies those allegations.

119. Paragraph 119 contains legal conclusions, to which no response is required. To the extent the allegations require a response, Burrell denies that Option ARM MBS was a "new" type of security within the meaning of WesCorp's policies. Burrell lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 119 and on that basis denies those allegations.

120. Burrell admits that he knew that "reset shock" was one factor (of perhaps 20) affecting the potential performance of collateral pools of Option ARM MBS. However, the degree to which that factor impacted the credit

1 risks associated with the Option ARM MBS securities themselves was also  
2 highly dependent on the specific level and type of credit enhancement or  
3 credit support provided to each individual security. At this time, and in  
4 subsequent periods through the period that WesCorp invested in Option  
5 ARMs, the surveillance reports produced by Investment Credit Services  
6 indicated that Option ARM collateral pools were performing better than  
7 expected. Burrell denies the other allegations of Paragraph 120 pertaining to  
8 him or to what he allegedly knew. Burrell lacks information or knowledge  
9 sufficient to form a belief as to the truth of the allegations of Paragraph 120  
10 pertaining to others and on that basis denies those allegations.

11 121. Burrell lacks information or knowledge sufficient to form a belief  
12 as to the truth of the allegations of Paragraph 121 and on that basis denies  
13 those allegations.

14 122. Burrell lacks information or knowledge sufficient to form a belief  
15 as to the truth of the allegations of Paragraph 122 and on that basis denies  
16 those allegations.

17 123. Burrell lacks knowledge or information sufficient to form a belief  
18 as to the truth of the allegations of Paragraph 123 and on that basis denies  
19 those allegations.

20 124. Burrell denies that he was "required" to recommend, propose or  
21 adopt concentration limits for specific types of collateral such as Option ARM  
22 MBS. Burrell avers that WesCorp had a number of different concentration  
23 limits that applied to Option ARM MBS, as well as other types of investments.  
24 Burrell lacks knowledge or information sufficient to form a belief as to the  
25 truth of the remaining allegations of Paragraph 124 and on that basis denies  
26 those allegations.

27

28

1           125. Burrell lacks knowledge or information sufficient to form a belief  
2 as to the truth of the allegations of Paragraph 125 and on that basis denies  
3 those allegations.

4           126. Burrell admits that WesCorp's board adopted meaningful  
5 concentration limits for its private label MBS investments. Burrell lacks  
6 information or knowledge sufficient to form a belief as to the truth of the  
7 remaining allegations of Paragraph 126 and on that basis denies those  
8 allegations.

9           127. Paragraph 127 contains legal conclusions, to which no response is  
10 required. To the extent the allegations require a response, they are denied.

11           128. Burrell denies that he was required to recommend, propose or  
12 adopt concentration limits for AAA-rated private label MBS by tranche  
13 position. Burrell avers that WesCorp had a number of different concentration  
14 limits that applied to AAA-rated private label MBS, as well as other types of  
15 investments. Burrell lacks knowledge or information sufficient to form a  
16 belief as to the truth of the remaining allegations of Paragraph 128 and on that  
17 basis denies those allegations.

18           129. Burrell denies that he was required to recommend, propose or  
19 adopt concentration limits for Option ARM MBS or lower tranche AAA-rated  
20 private label MBS in WesCorp's portfolio. Burrell avers that WesCorp had a  
21 number of different concentration limits that applied to Option ARM MBS, as  
22 well as other types of investments. Burrell lacks information or knowledge  
23 sufficient to form a belief as to the truth of the remaining allegations of  
24 Paragraph 129 and on that basis denies those allegations.

25           130. Burrell avers that WesCorp had a number of different  
26 concentration limits that applied to Option ARM MBS, as well as other types  
27 of investments, and tracked compliance with each. Burrell lacks information  
28

1 or knowledge sufficient to form a belief as to the truth of the allegations of  
2 Paragraph 130 and on that basis denies those allegations.

3 131. Burrell denies the allegations of Paragraph 131 pertaining to him  
4 and to what he knew. Burrell lacks information or knowledge sufficient to  
5 form a belief as to the truth of the remaining allegations of Paragraph 131 and  
6 on that basis denies those allegations.

7 132. Burrell admits that he served as the officer in charge of the  
8 Investment Department. Burrell admits that at one time Sidley was the officer  
9 in charge of the Investment Credit Services Department and Chief Risk  
10 Officer. Burrell denies that the Investment Department had the responsibility  
11 for monitoring and reviewing credit risk (as opposed to liquidity and interest  
12 rate risk). Burrell denies that the credit risk monitoring and reviews he saw  
13 that were performed by other departments within WesCorp were perfunctory  
14 or rote. Burrell lacks knowledge or information sufficient to form a belief as  
15 to the truth of the remaining allegations of Paragraph 132 and on that basis  
16 denies those allegations.

17 133. Paragraph 133 contains legal conclusions, to which no response is  
18 required. To the extent the allegations require a response, Burrell denies that  
19 the Investment Department had the responsibility for monitoring and  
20 reviewing credit risk (as opposed to liquidity and interest rate risk). Burrell  
21 denies that the credit risk monitoring and reviews he saw that were performed  
22 by other departments within WesCorp were other than thorough. Burrell lacks  
23 information or knowledge sufficient to form a belief as to the truth of the  
24 remaining allegations of Paragraph 133 and on that basis denies those  
25 allegations.

26  
27  
28

**The Warnings of Risks in WesCorp's Portfolio**

134. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 134 and on that basis denies those allegations.

135. Burrell admits that the Officer Defendants and the Director Defendants generally attended the ALCO meetings. Burrell refers to WesCorp's ALCO books, which speak for themselves, for their contents and denies any characterization inconsistent with their terms. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 135 and on that basis denies those allegations.

136. Burrell admits that in 2005 and 2006 he knew that the spreads between the returns on agency MBS and the returns on private label MBS, while fluctuating, generally were narrowing. Burrell refers to WesCorp's ALCO books, which speak for themselves, for their contents and denies any characterization inconsistent with their terms. Burrell denies any implication that he or the Investment Department recommended, or that WesCorp made, any investments believed to be other than "good" safe and sound investments. Burrell denies the remaining allegations of Paragraph 136.

137. Burrell refers to WesCorp's ALCO books, which speak for themselves, for their contents and denies any characterization inconsistent with their terms. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 137 and on that basis denies those allegations.

138. Burrell lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 138 and on that basis denies those allegations, except to the extent they reference the contents of

1 WesCorp's ALCO books, which speak for themselves. Burrell refers to  
2 WesCorp's ALCO books for their contents and denies any characterization  
3 inconsistent with their terms.

4 139. Burrell lacks knowledge or information sufficient to form a belief  
5 as to the truth of the allegations in Paragraph 139 and on that basis denies  
6 those allegations, except to the extent they reference the contents of  
7 WesCorp's ALCO books, which speak for themselves. Burrell refers to  
8 WesCorp's ALCO books for their contents and denies any characterization  
9 inconsistent with their terms.

10 140. Burrell lacks information or knowledge sufficient to form a belief  
11 as to the truth of the allegations of Paragraph 140 and on that basis denies  
12 those allegations.

13 141. Burrell lacks knowledge or information sufficient to form a belief  
14 as to the truth of the allegations in Paragraph 141 and on that basis denies  
15 those allegations, except to the extent they reference the contents of  
16 WesCorp's ALCO books, which speak for themselves. Burrell refers to  
17 WesCorp's ALCO books for their contents and denies any characterization  
18 inconsistent with their terms.

19 142. Burrell lacks knowledge or information sufficient to form a belief  
20 as to the truth of the allegations in Paragraph 142 and on that basis denies  
21 those allegations, except to the extent they reference the contents of  
22 WesCorp's ALCO books, which speak for themselves. Burrell refers to  
23 WesCorp's ALCO books for their contents and denies any characterization  
24 inconsistent with their terms.

25 143. Burrell admits that WesCorp reduced its purchases of AA-rated  
26 MBS in 2005 and ceased them altogether by the end of 2006. Burrell avers  
27 that WesCorp took many other steps to monitor market trends and to protect  
28

1 itself against adverse trends. Burrell lacks information or knowledge  
2 sufficient to form a belief as to the truth of the remaining allegations of  
3 Paragraph 143 and on that basis denies those allegations.

4 144. Burrell denies that he failed to inform WesCorp's board and  
5 ALCO of market trends, including any adverse market trends, and avers that  
6 the ALCO books prove the contrary. Burrell denies that he failed to  
7 recommend changes to investment strategy and avers that he recommended,  
8 and WesCorp made, a number of changes to investment strategy, including  
9 deemphasizing and then dropping altogether investments in AA-rated MBS  
10 and in subprime MBS, and deemphasizing or dropping other investments  
11 believed to be at increased risk once the housing market started to deteriorate.  
12 Burrell lacks information or knowledge sufficient to form a belief as to the  
13 truth of the remaining allegations of Paragraph 144 and on that basis denies  
14 those allegations.

15 145. Paragraph 145 contains legal conclusions, to which no response is  
16 required. To the extent the allegations require a response, they are denied.

17 146. Paragraph 146 contains legal conclusions, to which no response is  
18 required. To the extent the allegations require a response, Burrell admits that  
19 WesCorp stopped buying all private label MBS, including AAA-rated MBS,  
20 by the middle of 2007. Burrell lacks information or knowledge sufficient to  
21 form a belief as to the truth of the allegations of Paragraph 146 and on that  
22 basis denies those allegations..

23 147. Paragraph 147 contains legal conclusions, to which no response is  
24 required. To the extent the allegations require a response, they are denied.

25  
26  
27  
28

**The NCUA's Takeover of WesCorp**

148. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 148 and on that basis denies those allegations.

149. Burrell denies the first sentence of Paragraph 149 and avers that the NCUA took over WesCorp at a time when WesCorp was not insolvent, had not collapsed and did not lack sufficient liquidity to remain in operation. Burrell denies any allegation of Paragraph 149 that he was required to recommend, propose or adopt concentration limits for Option ARM MBS in WesCorp's portfolio. Burrell lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 149 and on that basis denies those allegations.

150. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 150 and on that basis denies those allegations.

151. Burrell denies that he was required to recommend, propose or adopt concentration limits for Option ARM MBS in WesCorp's portfolio. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 151 and on that basis denies those allegations.

152. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 152 and on that basis denies those allegations.

153. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 153 and on that basis denies those allegations.

**The SERP Payments**

154. Burrell admits that WesCorp's board authorized a supplemental executive retention plan ("SERP") for a number of senior executives, including himself, and avers that the NCUA deprived him of any and all monies to which he would have been entitled at his expected retirement date under his SERP but for the NCUA's actions. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 154 and on that basis denies those allegations.

155. Burrell admits that WesCorp's board authorized a SERP for a number of senior executives, including himself, and avers that the NCUA deprived him of any and all monies to which he would have been entitled under his SERP but for the NCUA's actions. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 155 and on that basis denies those allegations.

156. Burrell admits, on information and belief, that Siravo became President and CEO of WesCorp. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 156 and on that basis denies those allegations.

157. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 157 and on that basis denies those allegations.

158. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 158 and on that basis denies those allegations.

159. Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 159 and on that basis denies those allegations.

1           160. Burrell lacks information or knowledge sufficient to form a belief  
2 as to the truth of the allegations of Paragraph 160 and on that basis denies  
3 those allegations.

4           161. Burrell lacks information or knowledge sufficient to form a belief  
5 as to the truth of the allegations of Paragraph 161 and on that basis denies  
6 those allegations.

7           162. Burrell lacks information or knowledge sufficient to form a belief  
8 as to the truth of the allegations of Paragraph 162 and on that basis denies  
9 those allegations.

10          163. Burrell lacks information or knowledge sufficient to form a belief  
11 as to the truth of the allegations of Paragraph 163 and on that basis denies  
12 those allegations.

13          164. Burrell lacks information or knowledge sufficient to form a belief  
14 as to the truth of the allegations of Paragraph 164 and on that basis denies  
15 those allegations.

16          165. Burrell lacks information or knowledge sufficient to form a belief  
17 as to the truth of the allegations of Paragraph 165 and on that basis denies  
18 those allegations.

19          166. Burrell lacks information or knowledge sufficient to form a belief  
20 as to the truth of the allegations of Paragraph 166 and on that basis denies  
21 those allegations.

22          167. Burrell lacks information or knowledge sufficient to form a belief  
23 as to the truth of the allegations of Paragraph 167 and on that basis denies  
24 those allegations.

25          168. Burrell lacks information or knowledge sufficient to form a belief  
26 as to the truth of the allegations of Paragraph 168 and on that basis denies  
27 those allegations.

28

1           169. Burrell lacks information or knowledge sufficient to form a belief  
2 as to the truth of the allegations of Paragraph 169 and on that basis denies  
3 those allegations.

4           170. Burrell lacks information or knowledge sufficient to form a belief  
5 as to the truth of the allegations of Paragraph 170 and on that basis denies  
6 those allegations.

7           171. Burrell lacks information or knowledge sufficient to form a belief  
8 as to the truth of the allegations of Paragraph 171 and on that basis denies  
9 those allegations.

10          172. Burrell lacks information or knowledge sufficient to form a belief  
11 as to the truth of the allegations of Paragraph 172 and on that basis denies  
12 those allegations.

13          173. Burrell lacks information or knowledge sufficient to form a belief  
14 as to the truth of the allegations of Paragraph 173 and on that basis denies  
15 those allegations.

16          174. Burrell lacks information or knowledge sufficient to form a belief  
17 as to the truth of the allegations of Paragraph 174 and on that basis denies  
18 those allegations.

19          175. Burrell lacks information or knowledge sufficient to form a belief  
20 as to the truth of the allegations of Paragraph 175 and on that basis denies  
21 those allegations.

22          176. Burrell lacks information or knowledge sufficient to form a belief  
23 as to the truth of the allegations of Paragraph 176 and on that basis denies  
24 those allegations.

25          177. Burrell lacks information or knowledge sufficient to form a belief  
26 as to the truth of the allegations of Paragraph 177 and on that basis denies  
27 those allegations.

28

1           178. Burrell lacks information or knowledge sufficient to form a belief  
2 as to the truth of the allegations of Paragraph 178 and on that basis denies  
3 those allegations.

4           179. Burrell lacks information or knowledge sufficient to form a belief  
5 as to the truth of the allegations of Paragraph 179 and on that basis denies  
6 those allegations.

7           180. Burrell lacks information or knowledge sufficient to form a belief  
8 as to the truth of the allegations of Paragraph 180 and on that basis denies  
9 those allegations.

10          181. Burrell lacks information or knowledge sufficient to form a belief  
11 as to the truth of the allegations of Paragraph 181 and on that basis denies  
12 those allegations.

13          182. Burrell lacks information or knowledge sufficient to form a belief  
14 as to the truth of the allegations of Paragraph 182 and on that basis denies  
15 those allegations.

#### 16                                   **FIRST CLAIM FOR RELIEF**

##### 17                   **(Breach of Fiduciary Duties – Against the Officer Defendants)**

18          183. Burrell incorporates by reference his responses to paragraphs 1  
19 through 182 as though set forth in full.

20          184. Paragraph 184 contains legal conclusions, to which no response is  
21 required. To the extent the allegations require a response, they are denied.

22          185. Paragraph 185 contains legal conclusions, to which no response is  
23 required. To the extent the allegations require a response, they are denied.

24          186. Paragraph 186 contains legal conclusions, to which no response is  
25 required. To the extent the allegations require a response, they are denied.

26          187. Paragraph 187 contains legal conclusions, to which no response is  
27 required. To the extent the allegations require a response, Burrell lacks  
28

1 information or knowledge sufficient to form a belief as to the truth of the  
2 allegations of Paragraph 187 and on that basis denies those allegations.

3 188. Paragraph 188 contains legal conclusions, to which no response is  
4 required. To the extent the allegations require a response, Burrell lacks  
5 information or knowledge sufficient to form a belief as to the truth of the  
6 allegations of Paragraph 188 and on that basis denies those allegations.

7 189. Paragraph 189 contains legal conclusions, to which no response is  
8 required. To the extent the allegations require a response, Burrell lacks  
9 information or knowledge sufficient to form a belief as to the truth of the  
10 allegations of Paragraph 189 and on that basis denies those allegations.

11 190. Paragraph 190 contains legal conclusions, to which no response is  
12 required. To the extent the allegations require a response, Burrell denies those  
13 allegations.

14 191. Paragraph 191 contains legal conclusions, to which no response is  
15 required. To the extent the allegations require a response, Burrell denies the  
16 allegations about himself and lacks information or knowledge sufficient to  
17 form a belief as to the truth of the allegations of Paragraph 191 about others  
18 and on that basis denies those allegations.

19 192. Paragraph 192 contains legal conclusions, to which no response is  
20 required. To the extent the allegations require a response, Burrell denies the  
21 allegations about himself and lacks information or knowledge sufficient to  
22 form a belief as to the truth of the allegations of Paragraph 192 about others  
23 and on that basis denies those allegations.

24 193. Paragraph 193 contains legal conclusions, to which no response is  
25 required. To the extent the allegations require a response, Burrell denies the  
26 allegations about himself and lacks information or knowledge sufficient to  
27  
28

1 form a belief as to the truth of the allegations of Paragraph 193 about others  
2 and on that basis denies those allegations.

3 194. Paragraph 194 contains legal conclusions, to which no response is  
4 required. To the extent they require a response, Burrell lacks information or  
5 knowledge sufficient to form a belief as to the truth of the allegations of  
6 Paragraph 194 and on that basis denies those allegations.

7 195. Paragraph 195 contains legal conclusions, to which no response is  
8 required. To the extent they require a response, Burrell lacks information or  
9 knowledge sufficient to form a belief as to the truth of the allegations of  
10 Paragraph 195 and on that basis denies those allegations.

11 196. Paragraph 196 contains legal conclusions, to which no response is  
12 required. To the extent the allegations require a response, Burrell denies the  
13 allegations about himself and lacks information or knowledge sufficient to  
14 form a belief as to the truth of the allegations of Paragraph 196 about others  
15 and on that basis denies those allegations.

16 197. Paragraph 197 contains legal conclusions, to which no response is  
17 required. To the extent they require a response, Burrell denies those  
18 allegations.

19 198. Paragraph 197 contains legal conclusions, to which no response is  
20 required. To the extent they require a response, Burrell denies those  
21 allegations.

## 22 **SECOND CLAIM FOR RELIEF**

### 23 **(Breach of Fiduciary Duties – Against Defendants Rhamy, Updike,** 24 **Dames, Osberg, Longson and Harvey)**

25 199. Burrell incorporates by reference his responses to paragraphs 1  
26 through 198 as though set forth in full.

27

28

1           200. The Court has dismissed this claim and accordingly no response  
2 is required. Burrell is not named as a defendant to this Claim and accordingly  
3 no response is required. To the extent the allegations require a response,  
4 Burrell lacks information or knowledge sufficient to form a belief as to the  
5 truth of the allegations, and on that basis denies them.

6           201. The Court has dismissed this claim and accordingly no response  
7 is required. Burrell is not named as a defendant to this Claim and accordingly  
8 no response is required. To the extent the allegations require a response,  
9 Burrell lacks information or knowledge sufficient to form a belief as to the  
10 truth of the allegations, and on that basis denies them.

11          202. The Court has dismissed this claim and accordingly no response  
12 is required. Burrell is not named as a defendant to this Claim and accordingly  
13 no response is required. To the extent the allegations require a response,  
14 Burrell lacks information or knowledge sufficient to form a belief as to the  
15 truth of the allegations, and on that basis denies them.

16          203. The Court has dismissed this claim and accordingly no response  
17 is required. Burrell is not named as a defendant to this Claim and accordingly  
18 no response is required. To the extent the allegations require a response,  
19 Burrell lacks information or knowledge sufficient to form a belief as to the  
20 truth of the allegations, and on that basis denies them.

21          204. The Court has dismissed this claim and accordingly no response  
22 is required. Burrell is not named as a defendant to this Claim and accordingly  
23 no response is required. To the extent the allegations require a response,  
24 Burrell lacks information or knowledge sufficient to form a belief as to the  
25 truth of the allegations, and on that basis denies them.

26          205. The Court has dismissed this claim and accordingly no response  
27 is required. Burrell is not named as a defendant to this Claim and accordingly  
28

1 no response is required. To the extent the allegations require a response,  
2 Burrell lacks information or knowledge sufficient to form a belief as to the  
3 truth of the allegations, and on that basis denies them.

4 **THIRD CLAIM FOR RELIEF**

5 **(Breach of Fiduciary Duties – Against Defendants Jordan, Nakamura,**  
6 **Cheney, Rhamy, Kramer, Lentz, and Osberg)**

7 206. Burrell incorporates by reference his responses to paragraphs 1  
8 through 205 as though set forth in full.

9 207. The Court has dismissed this claim and accordingly no response  
10 is required. Burrell is not named as a defendant to this Claim and accordingly  
11 no response is required. To the extent the allegations require a response,  
12 Burrell lacks information or knowledge sufficient to form a belief as to the  
13 truth of the allegations, and on that basis denies them.

14 208. The Court has dismissed this claim and accordingly no response  
15 is required. Burrell is not named as a defendant to this Claim and accordingly  
16 no response is required. To the extent the allegations require a response,  
17 Burrell lacks information or knowledge sufficient to form a belief as to the  
18 truth of the allegations, and on that basis denies them.

19 209. The Court has dismissed this claim and accordingly no response  
20 is required. Burrell is not named as a defendant to this Claim and accordingly  
21 no response is required. To the extent the allegations require a response,  
22 Burrell lacks information or knowledge sufficient to form a belief as to the  
23 truth of the allegations, and on that basis denies them.

24 210. The Court has dismissed this claim and accordingly no response  
25 is required. Burrell is not named as a defendant to this Claim and accordingly  
26 no response is required. To the extent the allegations require a response,  
27  
28

1 Burrell lacks information or knowledge sufficient to form a belief as to the  
2 truth of the allegations, and on that basis denies them.

3 211. The Court has dismissed this claim and accordingly no response  
4 is required. Burrell is not named as a defendant to this Claim and accordingly  
5 no response is required. To the extent the allegations require a response,  
6 Burrell lacks information or knowledge sufficient to form a belief as to the  
7 truth of the allegations, and on that basis denies them.

8 212. The Court has dismissed this claim and accordingly no response  
9 is required. Burrell is not named as a defendant to this Claim and accordingly  
10 no response is required. To the extent the allegations require a response,  
11 Burrell lacks information or knowledge sufficient to form a belief as to the  
12 truth of the allegations, and on that basis denies them.

13 **FOURTH CLAIM FOR RELIEF**

14 **(Breach of Fiduciary Duties – Against All Director Defendants)**

15 213. Burrell incorporates by reference his responses to paragraphs 1  
16 through 212 as though set forth in full.

17 214. The Court has dismissed this claim and accordingly no response  
18 is required. Burrell is not named as a defendant to this Claim and accordingly  
19 no response is required. To the extent the allegations require a response,  
20 Burrell lacks information or knowledge sufficient to form a belief as to the  
21 truth of the allegations, and on that basis denies them.

22 215. The Court has dismissed this claim and accordingly no response  
23 is required. Burrell is not named as a defendant to this Claim and accordingly  
24 no response is required. To the extent the allegations require a response,  
25 Burrell lacks information or knowledge sufficient to form a belief as to the  
26 truth of the allegations, and on that basis denies them.

27

28

1           216. The Court has dismissed this claim and accordingly no response  
2 is required. Burrell is not named as a defendant to this Claim and accordingly  
3 no response is required. To the extent the allegations require a response,  
4 Burrell lacks information or knowledge sufficient to form a belief as to the  
5 truth of the allegations, and on that basis denies them.

6           217. The Court has dismissed this claim and accordingly no response  
7 is required. Burrell is not named as a defendant to this Claim and accordingly  
8 no response is required. To the extent the allegations require a response,  
9 Burrell lacks information or knowledge sufficient to form a belief as to the  
10 truth of the allegations, and on that basis denies them.

11           218. The Court has dismissed this claim and accordingly no response  
12 is required. Burrell is not named as a defendant to this Claim and accordingly  
13 no response is required. To the extent the allegations require a response,  
14 Burrell lacks information or knowledge sufficient to form a belief as to the  
15 truth of the allegations, and on that basis denies them.

16           219. The Court has dismissed this claim and accordingly no response  
17 is required. Burrell is not named as a defendant to this Claim and accordingly  
18 no response is required. To the extent the allegations require a response,  
19 Burrell lacks information or knowledge sufficient to form a belief as to the  
20 truth of the allegations, and on that basis denies them.

21           220. The Court has dismissed this claim and accordingly no response  
22 is required. Burrell is not named as a defendant to this Claim and accordingly  
23 no response is required. To the extent the allegations require a response,  
24 Burrell lacks information or knowledge sufficient to form a belief as to the  
25 truth of the allegations, and on that basis denies them.

26  
27  
28

**FIFTH CLAIM FOR RELIEF**

**(Breach of Fiduciary Duty – Against Siravo and Swedberg)**

221. Burrell incorporates by reference his responses to paragraphs 1 through 220 as though set forth in full.

222. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

223. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

224. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

225. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

226. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

**SIXTH CLAIM FOR RELIEF**

**(Fraud – Against Siravo and Swedberg)**

227. Burrell incorporates by reference his responses to paragraphs 1 through 226 as though set forth in full.

228. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

229. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

230. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

231. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

232. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

233. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response,

1 Burrell lacks information or knowledge sufficient to form a belief as to the  
2 truth of the allegations, and on that basis denies them.

3 234. Burrell is not named as a defendant to this Claim and accordingly  
4 no response is required. To the extent the allegations require a response,  
5 Burrell lacks information or knowledge sufficient to form a belief as to the  
6 truth of the allegations, and on that basis denies them.

7 **SEVENTH CLAIM FOR RELIEF**

8 **(Breach of Fiduciary Duty – Against Siravo)**

9 235. Burrell incorporates by reference his responses to paragraphs 1  
10 through 234 as though set forth in full.

11 236. Burrell is not named as a defendant to this Claim and accordingly  
12 no response is required. To the extent the allegations require a response,  
13 Burrell lacks information or knowledge sufficient to form a belief as to the  
14 truth of the allegations, and on that basis denies them.

15 237. Burrell is not named as a defendant to this Claim and accordingly  
16 no response is required. To the extent the allegations require a response,  
17 Burrell lacks information or knowledge sufficient to form a belief as to the  
18 truth of the allegations, and on that basis denies them.

19 238. Burrell is not named as a defendant to this Claim and accordingly  
20 no response is required. To the extent the allegations require a response,  
21 Burrell lacks information or knowledge sufficient to form a belief as to the  
22 truth of the allegations, and on that basis denies them.

23 239. Burrell is not named as a defendant to this Claim and accordingly  
24 no response is required. To the extent the allegations require a response,  
25 Burrell lacks information or knowledge sufficient to form a belief as to the  
26 truth of the allegations, and on that basis denies them.

27

28

**EIGHTH CLAIM FOR RELIEF**

**(Unjust Enrichment – Against Lane)**

240. Burrell incorporates by reference his responses to paragraphs 1 through 239 as though set forth in full.

241. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

242. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

243. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

244. Burrell is not named as a defendant to this Claim and accordingly no response is required. To the extent the allegations require a response, Burrell lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

245. Other than as expressly and specifically admitted above in the responses to Paragraphs 1 through 244, Burrell denies each and every allegation of the SAC and denies that the SAC states any claim against Burrell.

1 **AFFIRMATIVE DEFENSES**

2 246. As and for his affirmative defenses, Burrell alleges as follows and  
3 reserves the right to assert additional defenses in the event that discovery  
4 indicates they would be appropriate.

5 **FIRST AFFIRMATIVE DEFENSE**

6 **(Consent, Approval, Acquiescence, Authorization, Ratification)**

7 247. The SAC, and each cause of action alleged therein against  
8 Burrell, is barred, in whole or in part, because WesCorp and/or the NCUA,  
9 with full knowledge of Burrell's acts and omissions, consented to, approved  
10 of, acquiesced in, authorized and/or ratified each and every act or omission of  
11 Burrell that the SAC alleges to be improper.

12 **Burrell Acted Only With the Knowledge and Approval of WesCorp's**

13 **Board of Directors**

14 248. WesCorp made no investments, including but not limited to those  
15 challenged in this action, without first making full disclosure to WesCorp's  
16 Board of Directors and/or committees thereof (collectively, the "WesCorp  
17 Board") and obtaining the approval of the WesCorp Board.

18 249. WesCorp changed no concentration limits or other investment  
19 limitations or investment policies without first making full disclosure to the  
20 WesCorp Board and obtaining the approval of the WesCorp Board.

21 250. To the extent (if at all) Burrell did anything alleged in the SAC,  
22 he did so only after making disclosure to, and receiving the permission of, the  
23 WesCorp Board.

24 **The NCUA Disapproved of Prior Management and Praised the**

25 **Management the NCUA Now Is Suing**

26 251. Burrell is informed and believes and on that basis alleges that the  
27 NCUA was critical of WesCorp's prior and so-called conservative  
28

1 management, disapproved of that management, suggested or required that  
2 WesCorp's board hire new management and approved of – or at least did not  
3 disapprove, as it had the power to do – the hiring of WesCorp's new  
4 management, including Burrell.

5 252. In 2005, 2006 and 2007 – and indeed after WesCorp had made all  
6 the investments challenged in this case – the NCUA still praised WesCorp's  
7 management as performing in an exemplary fashion, as demonstrably strong,  
8 as able to balance the various kinds of risk, including credit risk, that WesCorp  
9 faced, as conservative, as operating well within regulatory limits and as  
10 adhering to a much more conservative set of guidelines than the NCUA  
11 required.

12 253. The NCUA gave management such praise despite the NCUA's  
13 knowledge and recognition that WesCorp sought to maximize member returns  
14 while controlling strains on capital – a philosophy that the NCUA endorsed  
15 and said had served WesCorp well.

16 **The NCUA Gave WesCorp Special Permission to Buy Far Riskier**  
17 **Investments Than WesCorp Ever Bought and Far Riskier Investments**  
18 **Than Those the NCUA Now Attacks**

19 254. Burrell is informed and believes and on that basis alleges that the  
20 NCUA affirmatively chose to give WesCorp the highest level of expanded  
21 investment authority given to any corporate credit union.

22 255. In particular but without limitation, the NCUA gave WesCorp  
23 authority to invest in securities rated by the ratings agencies as low as BBB.  
24 *See* 12 C.F.R. Part 704, Appx. B (Oct. 25, 2002). BBB is six levels below the  
25 lowest rated investment that WesCorp ever made (AA).

26  
27  
28

**The NCUA Monitored WesCorp's Investments Daily Using On-Site  
Examiners in Additional To Annual Examinations**

256. The NCUA's Office of Corporate Credit Unions ("OCCU") provided supervision and oversight of WesCorp, including its investment strategies and risk assessment.

257. The NCUA's supervision was conducted, among other ways, through an on-site Capital Market Specialist ("CMS") who was physically located at WesCorp's facilities on a full-time basis.

258. In particular and without limitation, the CMS provided real-time surveillance of WesCorp's investment activity.

259. The on-site CMS had a permanent office at WesCorp. The on-site CMS received (among other things) the ALCO and Board books and minutes of ALCO meetings, Board meetings and other key meetings, WesCorp's financial statements, copies of a number of internal management reports and custom reports that the CMS themselves designed. The on-site CMS received these materials at the same time they were circulated internally to management and to WesCorp's board.

260. The on-site CMS had his own drive on WesCorp's computer network where the above materials, and other requested raw data, was placed for his use.

261. In addition to the formal reporting, the on-site CMS spent much of his day walking around and talking directly with a large number of key WesCorp staff about WesCorp's activities, including its investment activities.

262. The on-site CMS also requested permission, which was normally forthcoming, to sit in on certain meetings such as the Board training sessions.

263. The CMS also assisted in annual examinations of WesCorp, although by design the CMS did not directly carry out examination work

1 himself.

2 264. The OCCU examiners' efforts resulted in yearly examination  
3 reports, analyzing and assessing WesCorp's operations, including but not  
4 limited to WesCorp's investment strategies and risk assessment.

5 265. In addition, the NCUA's Office of Capital Markets ("OCM")  
6 provided assistance to NCUA's OCCU examiner by, among other things,  
7 helping to evaluate WesCorp's investments and related asset and liability  
8 issues.

9 266. At the NCUA's request, WesCorp staff also conducted training  
10 sessions on risk management for NCUA natural person credit union examiners  
11 that were organized and run by the OCM.

12 267. WesCorp staff also regularly provided training sessions to  
13 examination staff from other state regulatory bodies including the National  
14 Association of Credit Union Supervisors ("NASCUS") and the Departments  
15 of Financial Institutions in both California and Washington State.

16 268. At the NCUA's request, the OCCU regularly sent other CMS to  
17 WesCorp for training purposes.

18 269. Burrell is informed and believes and on that basis alleges that, as  
19 a result of NCUA's constant oversight and examination efforts, NCUA was at  
20 all times aware of WesCorp's investments, investment philosophy and  
21 monitoring and risk-protection efforts, and the NCUA consistently approved  
22 of WesCorp's investments, investment philosophy and monitoring and risk-  
23 protection efforts.

24

25

26

27

28

**The WesCorp Board and the NCUA Approved of WesCorp's Investment  
in Option ARM MBS, Lower Tranche MBS and  
Reduced Documentation MBS**

270. Burrell is informed and believes and on that basis alleges that the NCUA, through its oversight and examination efforts, also knew that Option ARM MBS were not a "new" security type that WesCorp began investing in.

271. NCUA regulations and WesCorp policies refer to "new" security types as those securities which have different collateral than other securities.

272. As NCUA and the WesCorp Board were aware at all relevant times, WesCorp had a long history of purchasing securities with the same type of collateral – mortgages – as Option ARM MBS.

273. The WesCorp Board knew of and approved WesCorp's investment in Option ARM MBS and never suggested that Option ARM MBS were a "new" security type which WesCorp should review as such.

274. Burrell is informed and believes and on that basis alleges that NCUA and OCCU examiners knew of and acquiesced in WesCorp's investment in Option ARM MBS and never suggested that Option ARM MBS were a "new" security type which WesCorp should review as such.

275. Burrell is informed and believes and on that basis alleges that the NCUA, though its OCCU examiners, consistently approved of WesCorp's investment strategies and investment concentrations, including WesCorp's investments in Option ARM MBS, lower tranche MBS and reduced documentation MBS.

**The WesCorp Board and the NCUA Approved of WesCorp's Investment  
Related Policies and Procedures**

276. Burrell is informed and believes and on that basis alleges that the WesCorp Board and the NCUA approved of WesCorp's investment related and credit risk management policies and procedures including, among other things, the policies and procedures described in paragraphs 277 through 303 below.

277. The WesCorp Board approved of and ordered WesCorp's policies and procedures for limiting investments to primarily high grade securities with AA and AAA ratings.

278. Burrell is informed and believes and on that basis alleges that the NCUA approved of the WesCorp Board's policies and procedures for limiting investments to primarily high grade securities with AA and AAA ratings. Indeed, the NCUA praised WesCorp's criteria as stringent and conservative, with several levels of diversification to mitigate risk, and praised WesCorp's asset portfolio as high quality.

279. The WesCorp Board approved of WesCorp's policies and procedures for conducting credit reviews on proposed security purchases prior to purchasing.

280. Burrell is informed and believes and on that basis alleges that the NCUA approved of WesCorp's policies and procedures for conducting credit reviews on proposed security purchases prior to purchasing. Indeed, while suggesting ways that procedures might be improved, the NCUA said in 2006 that WesCorp's procedures met industry standards, and the next year (2007), the NCUA described WesCorp's procedures as involving rigorous screening and diligent monitoring.

1           281. Burrell is informed and believes and on that basis alleges that the  
2 NCUA approved of – and indeed required – that WesCorp separate the credit  
3 risk management function from the interest rate and liquidity risk taking and  
4 investment functions, and make the credit risk management function a stand-  
5 alone unit, independent of the risk taking or investment function. *See* NCUA,  
6 OCCU, *Guidelines for Submission of Requests for Expanded Authority Under*  
7 *the Provisions of Appendix B, Part 704, NCUA Rules and Regulations* (Oct.  
8 17, 2002).

9           282. Accordingly, Burrell had no duty to perform the credit risk  
10 management function and by regulation, policy and practice was prohibited  
11 from active participation in any credit related recommendations to the  
12 WesCorp Board.

13           283. The WesCorp Board approved of WesCorp's policies and  
14 procedures for conducting credit reviews on proposed security purchases prior  
15 to purchasing.

16           284. Burrell is informed and believes and on that basis alleges that the  
17 NCUA knew and approved of WesCorp's policies and procedures for  
18 conducting credit reviews on proposed security purchases prior to purchasing.

19           285. The WesCorp Board approved of WesCorp's policies and  
20 procedures for conducting annual credit reviews on existing securities.

21           286. Burrell is informed and believes and on that basis alleges that the  
22 NCUA knew and approved of WesCorp's policies and procedures for  
23 conducting annual credit reviews on existing securities.

24           287. The WesCorp Board approved of WesCorp's policies and  
25 procedures for preparing monthly watch lists for, and keeping appropriate  
26 oversight of, securities that were not performing well.

27

28

1           288. Burrell is informed and believes and on that basis alleges that the  
2 NCUA approved of WesCorp's policies and procedures for preparing monthly  
3 watch lists for, and keeping appropriate oversight of, securities that were not  
4 performing well.

5           289. The WesCorp Board approved of WesCorp's policies and  
6 procedures for creating concentration limits as to individual issues, individual  
7 issuers, individual underwriters, individual servicers and particular geographic  
8 areas, among other things, and monitored compliance with such limits  
9 monthly.

10          290. Burrell is informed and believes and on that basis alleges that the  
11 NCUA knew and approved of WesCorp's policies and procedures for creating  
12 concentration limits as to individual issues, individual issuers, individual  
13 underwriters, individual servicers and particular geographic areas, among  
14 other things, and monitored compliance with such limits periodically.

15          291. By way of example, and without limitation, the NCUA suggested  
16 that WesCorp add new concentration limits by servicer, and WesCorp did so.

17          292. The WesCorp Board never suggested to Burrell that WesCorp  
18 create new concentration limits for Option ARMs, or for specific types of  
19 collateral.

20          293. The NCUA never suggested to WesCorp that it create new  
21 concentration limits for Option ARMs, or for specific types of collateral.  
22 Indeed, the NCUA specifically praised WesCorp for good asset diversification  
23 and in particular praised its derivatives program.

24          294. The WesCorp Board approved of WesCorp's policies and  
25 procedures for creating concentration limits as to different security types.  
26  
27  
28

1           295. Burrell is informed and believes and on that basis alleges that the  
2 NCUA knew and approved of WesCorp's policies and procedures for creating  
3 concentration limits as to different security types.

4           296. The WesCorp Board approved of WesCorp's policies and  
5 procedures for publishing monthly reports on credit status and providing the  
6 WesCorp Board and ALCO with substantial information regarding  
7 concentration limits and credit enhancement levels on WesCorp's security  
8 portfolios.

9           297. Burrell is informed and believes and on that basis alleges that the  
10 NCUA knew and approved of WesCorp's policies and procedures for  
11 publishing monthly reports on credit status and providing the WesCorp Board  
12 and ALCO with substantial information regarding concentration limits and  
13 credit enhancement levels on WesCorp's security portfolios.

14           298. Before filing its first amended complaint in this lawsuit, the  
15 NCUA never told Burrell or made any claim that WesCorp's investment  
16 strategies violated NCUA regulations or WesCorp policies.

17           299. The WesCorp Board at all times approved of WesCorp's  
18 investment strategies.

19           300. Burrell is informed and believes and on that basis alleges that the  
20 NCUA at all times knew and approved of WesCorp's investment strategies.

21           301. The WesCorp Board approved of WesCorp's risk assessment  
22 efforts.

23           302. Burrell is informed and believes and on that basis alleges that the  
24 NCUA knew and generally approved of WesCorp's risk assessment efforts.

25           303. In those instances, to the extent there were any, where the NCUA  
26 raised any concerns regarding WesCorp's risk assessment efforts, WesCorp  
27  
28

1 promptly addressed those concerns, and the WesCorp Board and the NCUA  
2 subsequently approved of WesCorp's remedial efforts.

3 **The NCUA Knew That the Ratings Agencies Also Praised WesCorp**

4 304. Burrell is informed and believes and on that basis alleges that the  
5 NCUA at all relevant times knew that the ratings agencies (such as Moody's  
6 and Standard & Poor) reviewed WesCorp, including its investment portfolio,  
7 and gave WesCorp high marks for having a high-credit-quality asset portfolio  
8 with low credit risk.

9 **The NCUA Believed and Publicly Stated That AA and AAA Rated**  
10 **Private Label MBS Were Appropriate Investments and Nearly as Safe as**  
11 **Agency MBS**

12 305. As late as July 2010, the NCUA believed and publicly made the  
13 statements set forth in paragraphs 306 through 313 below, among others.

14 306. "Historically mortgage-backed securities experienced no  
15 significant losses . . . ."

16 307. "Historically, mortgage-backed securities fit well into the  
17 corporate credit unions' business function as a liquidity provider because there  
18 was an active market for mortgage-backed securities and they could be used as  
19 collateral for borrowing."

20 308. "When corporate credit unions had excess funds on deposit from  
21 consumer credit unions who were their members, some purchased private-  
22 label mortgage-backed securities with those funds. The securities offered a  
23 better return and were historically just as safe as many other investment  
24 products."

25 309. "When the investment requirements for Part 704 [that is,  
26 12 C.F.R. Part 704, the NCUA's regulations for corporate credit unions, none  
27 of which WesCorp is alleged to have violated] were implemented, a thorough  
28

1 review was performed on the history of credit ratings and their success in  
2 evaluating the financial strength of marketable securities. The loss history of  
3 securities with an initial rating of triple-A or double-A was less than one half  
4 of one percent. The loss history of securities issued by government-sponsored  
5 entities and the loss history of private label securities was virtually the same.”

6 310. “While corporate credit unions were not allowed to rely only on  
7 credit ratings, the track record of credit ratings in evaluating the future  
8 performance of securities was historically strong. Credit ratings have been an  
9 investment decision-making tool in financial markets for decades.”

10 311. “All of the mortgage-backed securities that were purchased by  
11 corporate credit unions were permissible at the time they were acquired and  
12 accordingly met the rating requirements.”

13 312. “Based on historic performance, there appeared to be very little  
14 risk with the private label mortgage backed securities purchased by the  
15 corporates.”

16 313. “Finally, many of the securities paid interest based on a floating  
17 rate rather than a fixed rate. This helped corporate credit unions in the overall  
18 management of their investment and share portfolios, and mitigated the risk of  
19 changing interest rates.”

20 314. In light of the foregoing, the WesCorp Board and/or the NCUA  
21 knowingly consented to, approved of, acquiesced in, authorized and/or ratified  
22 each and every act or omission of Burrell that the NCUA now challenges as  
23 improper and complains of in the SAC.

24

25

26

27

28

1 **SECOND AFFIRMATIVE DEFENSE**

2 **(Business Judgment Rule, Due Diligence, Reasonable Investigation,**  
3 **Business Custom and Usage, Candor, Good Faith)**

4 315. Burrell incorporates by reference and realleges each and every  
5 allegation contained in paragraphs 247 through 314 as though fully set forth  
6 herein.

7 316. The SAC, and each cause of action alleged therein against  
8 Burrell, is barred, in whole or in part, because each and every act and omission  
9 of Burrell challenged by the SAC was made after reasonable investigation,  
10 because Burrell had reasonable grounds to believe, and did believe, that such  
11 acts or omissions were prudent given the circumstances, and because every act  
12 and omission of Burrell met or exceeded the custom and practice in the  
13 industry and was undertaken in good faith, with full disclosure to the WesCorp  
14 Board, and in what Burrell honestly believed to be the best interest of  
15 WesCorp.

16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Reliance on Others)**

18 317. Burrell incorporates by reference and realleges each and every  
19 allegation contained in paragraphs 247 through 314 as though fully set forth  
20 herein.

21 318. The SAC, and each cause of action alleged therein against  
22 Burrell, is barred, in whole or in part, because every act or omission by Burrell  
23 alleged in the SAC, if it occurred at all, was made or occurred in reasonable  
24 good faith reliance on the statements and representations of others within  
25 WesCorp and outside of WesCorp upon which Burrell was entitled to rely,  
26 including but not limited to the professional judgments of WesCorp's  
27 professionals, as well as its inside and outside auditors, investment bankers,  
28

1 ratings agencies, consultants (such as RiskSpan) and counsel concerning  
2 matters which Burrell reasonably believed to be within such persons'  
3 professional or expert competence.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 **(Conduct of Others)**

6 319. Burrell incorporates by reference and realleges each and every  
7 allegation contained in paragraphs 247 through 314 as though fully set forth  
8 herein.

9 320. The SAC, and each cause of action alleged therein against  
10 Burrell, is barred, in whole or in part, to the extent NCUA purports to hold  
11 Burrell responsible for alleged misdeeds of third persons, including but not  
12 limited to rating agencies, lenders, issuers and underwriters, such as the  
13 entities that the NCUA has sued in this Court and in other courts, and has  
14 accused of making misrepresenting to WesCorp about MBS sold to WesCorp.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 **(Apportionment)**

17 321. Burrell incorporates by reference and realleges each and every  
18 allegation contained in paragraphs 247 through 314 as though fully set forth  
19 herein.

20 322. Without admitting that NCUA suffered damages in any amount,  
21 or that Burrell or any defendant is or should be liable for any such damages,  
22 Burrell asserts that his liability and the liability of any other responsible  
23 persons, named or unnamed, should be apportioned according to their relative  
24 degrees of fault, and any alleged liability of Burrell should be reduced  
25 accordingly.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Intervening or Superseding Cause)**

3 323. Burrell incorporates by reference and realleges each and every  
4 allegation contained in paragraphs 247 through 314 as though fully set forth  
5 herein.

6 324. The SAC, and each cause of action alleged therein against  
7 Burrell, is barred, in whole or in part, because NCUA's alleged damages, if  
8 any, were the result of one or more intervening or superseding causes or  
9 caused by the acts and/or failures to act of persons and/or entities other than  
10 Burrell, and were not caused by any act or omission on the part of Burrell.

11 325. Such intervening and supervening causes include but are not  
12 limited to the fact that all investments made by WesCorp, and all investment  
13 policies adopted by WesCorp, were approved, authorized and/or ratified by the  
14 WesCorp Board.

15 326. Such intervening and supervening causes include but are not  
16 limited to the worldwide credit crunch and other macroeconomic and  
17 mortgage industry events that constrained WesCorp's access to the credit and  
18 capital markets, affected its liquidity, and caused sharp and unforeseen drops  
19 in the value of its investment portfolio.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 **(Statute of Limitations)**

22 327. Burrell incorporates by reference and realleges each and every  
23 allegation contained in paragraphs 247 through 314 as though fully set forth  
24 herein.

25 328. The SAC, and each cause of action alleged therein against  
26 Burrell, is barred, in whole or in part, because of the applicable statute(s) of  
27 limitations and/or period(s) of repose.

28

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 **(No Entitlement to Exemplary or Punitive Damages)**

3 329. Burrell incorporates by reference and realleges each and every  
4 allegation contained in paragraphs 247 through 314 as though fully set forth  
5 herein.

6 330. If indeed the SAC's First Claim (the only one asserted against  
7 Burrell) seeks punitive damages from Burrell (which is unclear, *compare* SAC  
8 ¶¶ 1-198 *with* SAC at 57:15 (Prayer ¶ 2)), the NCUA is precluded from  
9 recovering exemplary or punitive damages, either in whole or in part, from  
10 Burrell under the applicable provisions of the law, including, without  
11 limitation, California Civil Code section 3294, the United States Constitution  
12 and/or the California Constitution.

13  
14 **COUNTERCLAIMS**

15 331. For counterclaims, Burrell alleges:

16 **JURISDICTION**

17 332. The Court has supplemental jurisdiction over these counterclaims  
18 under 28 U.S.C. § 1367(a), because these counterclaims and the purported  
19 claims alleged by plaintiff all form part of the same case or controversy  
20 concerning the parties' rights and responsibilities related to Defendants'  
21 service as officers and directors of WesCorp.

22 333. The amount in controversy with respect to each of these  
23 counterclaims exceeds the sum or value of \$75,000, exclusive of interest and  
24 costs.

25 **PARTIES**

26 334. Between June 30, 1997 and March 20, 2009, Counterclaimant  
27 Burrell served as Chief Investment Officer of WesCorp. Between January 31,  
28

1 2003 and March 20, 2009, Burrell served as an Executive Vice President of  
2 WesCorp.

3 335. Counter-defendant National Credit Union Administration Board  
4 as Liquidator of Western Corporate Federal Credit Union ("NCUA") is the  
5 liquidating agent of WesCorp.

## 6 **FACTUAL ALLEGATIONS**

### 7 **Policy 21**

8 336. The WesCorp Board adopted a resolution regarding  
9 indemnification and insurance, codified in WesCorp's book of policies as  
10 "Policy 21." At all relevant times, the NCUA knew of and approved of  
11 Policy 21.

12 337. WesCorp promised in Policy 21 to indemnify WesCorp's current  
13 and former directors and officers "to the maximum extent permitted by either"  
14 California law or the Model Business Corporation Act ("MBCA") "for any  
15 liability asserted against them in connection with judicial or administrative  
16 proceedings, formal or informal, to which they are or may become parties by  
17 reason of the performance of their official duties."

18 338. WesCorp also agreed in Policy 21 that the indemnification "shall  
19 include the recovery of reasonable costs and attorneys' fees incurred by an  
20 individual so indemnified if such individual is required to engage the services  
21 of any attorney ... to secure the indemnity provided herein."

22 339. WesCorp also agreed in Policy 21 to "purchase and maintain  
23 insurance" on behalf of current and former officials and employees "against  
24 any liability asserted against them and expenses reasonably incurred by them  
25 in their official capacities and arising out of the performance of their official  
26 duties to the extent such insurance is permitted by the applicable state law or  
27 the Model Business Corporation Act."

28

**The CUMIS Policy**

340. WesCorp purchased a “directors and officers” insurance policy from CUMIS Insurance Society, Inc. (“CUMIS”), Special Insurance Package No. 065468-22 (the “CUMIS Policy”), effective January 1, 2009.

341. On December 11, 2009, Counterclaimants’ then-counsel, Randy Moore (“Moore”), sent a letter to CUMIS tendering the defense of this suit under the CUMIS Policy.

342. On December 28, 2009, CUMIS sent a letter to Moore denying that CUMIS has a “duty to defend” under the CUMIS Policy and denying coverage for the claim.

343. CUMIS agreed that the allegations of the complaint – breach of duties in the discharge of Counterclaimants’ duties as directors and employees of WesCorp – were the type of “claims” for “losses” related to a “wrongful act” that are covered by the terms of the Policy.

344. However, CUMIS claimed that it does not have a “duty to defend” under the CUMIS Policy, which states that “CUMIS has no duty to defend . . . or to pay any ‘defense costs’ prior to the final adjudication or disposition of any ‘claim’ . . . .”

345. CUMIS also refused to cover the claim against Burrell on the ground that the CUMIS Policy contains an “investment exclusion” which provides that “CUMIS will not be liable to make any payment for ‘loss’ in connection with or arising out of any ‘claim’ . . . . Based upon or resulting directly or indirectly from investments . . . [or] investment or trading losses . . . .”

346. CUMIS agreed to pay only an aggregate amount of \$100,000 of defense costs for all of the insured defendants under the CUMIS Policy pursuant to an exception to the “investment exclusion” allowing for payment

1 of such costs subject to a \$500,000 retention or deductible.

2 **The NCUA's Refusal to Pay Burrell's Defense Costs**

3 347. On December 11, 2009, Moore sent a letter to the NCUA  
4 requesting that the NCUA as conservator or liquidator of WesCorp indemnify  
5 and pay the defense costs of Burrell pursuant to Policy 21.

6 348. On February 2, 2010, the NCUA sent a letter to Moore refusing  
7 to pay defense costs. The NCUA's letter stated that the NCUA would  
8 determine whether it would provide indemnification "once the matter is  
9 resolved."

10 **Burrell's Exhaustion of Administrative Remedies**

11 349. On February 1, 2011, Burrell and the Director Defendants  
12 submitted a request to NCUA as Liquidating Agent for WesCorp for  
13 indemnification of any judgment against them arising from this litigation,  
14 reimbursement of past defense costs incurred in defending this litigation,  
15 payment of any future defense costs that they might incur, and payment for  
16 any costs they incur in establishing their right to indemnity (the "Claim").

17 350. By not responding to the Claim within 180 days, as required by  
18 law, the Liquidating Agent has by operation of law denied the claim, effective  
19 on the 180th day.

20 **FIRST COUNTERCLAIM**

21 **(Damages for Breach of Obligation to Pay Litigation Costs**  
22 **Under Policy 21)**

23 351. Burrell incorporates by reference and realleges each and every  
24 allegation contained in paragraphs 331 through 350 as though fully set forth  
25 herein.

26 363. WesCorp agreed in Policy 21 to indemnify Burrell "to the  
27 maximum extent permitted by either" California law *or* the MBCA.

28

1           364. The MBCA provides that a corporation must pay defense costs if  
2 the corporation has promised by resolution or otherwise indemnification “to  
3 the fullest extent permitted by law,” as WesCorp did in Policy 21. MBCA  
4 section 8.58 expressly states that any such resolution “shall be deemed to  
5 *obligate* the corporation to *advance* funds to pay for or reimburse” the defense  
6 costs before final disposition of the case (emphasis added).

7           365. Burrell has performed all of his obligations under Policy 21  
8 except to the extent that his performance has been excused by the actions of  
9 WesCorp and/or the NCUA.

10          366. Upon request Burrell will provide to the NCUA as Liquidator of  
11 WesCorp the written affirmation and undertaking required for payment of  
12 attorneys’ fees by MBCA § 8.53.

13          367. Upon request Burrell will provide a written affirmation that he in  
14 good faith believes that he has met the relevant standard of conduct in MBCA  
15 § 8.51 required for indemnification: that he conducted himself in good faith  
16 and in what he reasonably believed was in the best interests of WesCorp.

17          368. Upon request Burrell also will provide a written undertaking to  
18 repay any advanced funds if it is ultimately determined that he is not entitled  
19 to mandatory indemnification or that he did not meet the standard of conduct  
20 under section 8.51.

21          369. The NCUA as liquidator of WesCorp is liable for WesCorp’s  
22 obligation to pay Burrell’s defense costs incurred in this litigation under the  
23 provisions of the MBCA that are adopted in Policy 21.

24          370. The NCUA has failed to pay Burrell’s defense costs incurred in  
25 this action

26          371. Burrell has incurred damages as a result of the NCUA’s failure to  
27 pay his defense costs incurred to date in this litigation, which exceed \$100,000  
28

1 through September 2011.

2 372. Burrell will continue to incur damages as a result of the NCUA's  
3 continuing refusal to pay his defense costs incurred in this litigation, in an  
4 amount to be determined by dispositive motions or at trial.

5 **SECOND COUNTERCLAIM**

6 **(Damages for Breach of Obligation to Pay Litigation Costs under**  
7 **California Labor Code 2802)**

8 373. Burrell incorporates by reference and realleges each and every  
9 allegation contained in paragraphs 331 through 350 as though fully set forth  
10 herein.

11 374. At all relevant times, Burrell was an employee of WesCorp.

12 375. California Labor Code Section 2802 provides that an employer  
13 "*shall* indemnify his or her employee for all necessary expenditures or losses  
14 incurred by the employee in direct consequence of the discharge of his or her  
15 duties[.]"

16 376. The NCUA as liquidator of WesCorp is obligated to reimburse  
17 Burrell for his defense costs as they are incurred in this litigation under  
18 California Labor Code Section 2802.

19 377. Burrell has incurred and paid attorneys' fees and costs in defense  
20 of the claims asserted by the NCUA as liquidator of WesCorp in this litigation,  
21 and will continue to do so.

22 378. The NCUA has failed to reimburse Burrell for the attorneys' fees  
23 and costs he has incurred to date, and has refused to reimburse him for defense  
24 costs as incurred.

25 379. Burrell has incurred damages as a result of the NCUA's failure to  
26 pay his defense costs incurred to date in this litigation, which exceed \$100,000  
27 through September 2011.

28

1           380. Burrell will continue to incur damages as a result of the NCUA's  
2 continuing refusal to pay his defense costs incurred in this litigation, in an  
3 amount to be determined by dispositive motions or at trial.

4                           **THIRD COUNTERCLAIM**

5                   **(Damages for Breach of Obligation to Provide Indemnity**  
6                           **Under Policy 21)**

7           381. Burrell incorporates by reference and realleges each and every  
8 allegation contained in paragraphs 331 through 350 as though fully set forth  
9 herein.

10          382. WesCorp agreed in Policy 21 to indemnify Burrell "to the  
11 maximum extent permitted by either" California law *or* the MBCA.

12          383. Burrell has demanded that the NCUA, as liquidator of WesCorp,  
13 indemnity him under Policy 21 to the fullest extent permissible under either  
14 California law or the MBCA, and pay his defense costs to the fullest extent  
15 permissible under either California law or the MBCA.

16          384. Burrell also demands recovery of costs and attorneys' fees  
17 incurred to secure the indemnity provided for in Policy 21.

18          385. If NCUA refuses to indemnify Burrell pursuant to Policy 21,  
19 Burrell will suffer damages in an amount to be determined at trial.

20                           **FOURTH COUNTERCLAIM**

21                   **(Damages for Breach of Obligation to Provide Insurance)**

22          386. Burrell incorporates by reference and realleges each and every  
23 allegation contained in paragraphs 331 through 350 as though fully set forth  
24 herein.

25          387. WesCorp promised in Policy 21 to "purchase and maintain"  
26 insurance "against any liability asserted against" Burrell.

27          388. WesCorp purchased the CUMIS Policy.  
28

1           389. CUMIS has taken the position that the claims asserted against  
2 Burrell in this action are excluded from coverage under the insurance policy.

3           390. Because the CUMIS Policy does not cover Burrell for “any  
4 liability” related to an investment claim, WesCorp breached its promise to  
5 provide insurance coverage for Burrell in Policy 21.

6           391. WesCorp breached the promise in Policy 21 to provide insurance  
7 coverage for Burrell because CUMIS has denied coverage for the claims  
8 asserted against Burrell in this action and, therefore, the CUMIS Policy does  
9 not cover Burrell for “any liability” asserted against him.

10          392. The NCUA as liquidator of WesCorp is liable for WesCorp’s  
11 obligations.

12          393. The NCUA, after putting WesCorp into conservatorship,  
13 compounded the damage to Burrell by canceling the CUMIS Policy, by  
14 refusing to obtain replacement insurance coverage and by refusing CUMIS’  
15 offer of supplemental insurance with fewer coverage exclusions than the  
16 CUMIS Policy.

17          394. If WesCorp had complied with its obligations in Policy 21 and  
18 obtained adequate insurance coverage, Burrell would have been covered for all  
19 of the costs and claims related to this litigation.

20          395. If the NCUA had not done the things alleged in paragraph 393,  
21 Burrell would have been covered for all (or at least part) of his defense costs  
22 and the claims against him in this litigation.

23          396. Burrell has performed all of his obligations under Policy 21  
24 except to the extent that his performance has been excused by the actions of  
25 WesCorp and/or the NCUA.

26          397. Burrell has incurred damages for his unreimbursed defense costs  
27 incurred to date, which exceed \$100,000 through September 2011.

28

398. Burrell will continue to incur damages in this litigation in an amount to be determined by dispositive motions or at trial, as a result of WesCorp's failure to obtain insurance as required by Policy 21.

**PRAYER**

WHEREFORE, Burrell prays for judgment against plaintiffs as follows:

1. That plaintiff takes nothing by the Complaint and that the Complaint be dismissed with prejudice.
2. That judgment be entered in favor of Burrell and against plaintiff.
3. That Burrell be awarded damages on his counterclaims, in amounts to be determined by motions(s) before trial and/or at trial.
4. That the NCUA be ordered to reimburse Burrell for the defense costs he has incurred in this litigation.
5. That Burrell be awarded his costs and reasonable attorneys' fees.
6. That Burrell be granted such other and further relief as the Court may deem just and proper.

Dated: October 31, 2011.

PILLSBURY WINTHROP SHAW PITTMAN LLP  
REYNOLD L. SIEMENS #177956  
Email: [reynold.siemens@pillsburylaw.com](mailto:reynold.siemens@pillsburylaw.com)  
725 South Figueroa Street, Suite 2800  
Los Angeles, CA 90017-5406

PILLSBURY WINTHROP SHAW PITTMAN LLP  
BRUCE A. ERICSON #76342  
Email: [bruce.ericson@pillsburylaw.com](mailto:bruce.ericson@pillsburylaw.com)  
MARLEY DEGNER #251923  
Email: [marley.degner@pillsburylaw.com](mailto:marley.degner@pillsburylaw.com)  
50 Fremont Street, Post Office Box 7880  
San Francisco, CA 94120-7880

By /s/ Bruce A. Ericson  
Bruce A. Ericson

Attorneys for Defendant  
ROBERT JOHN BURRELL

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, defendant and counterclaimant ROBERT JOHN BURRELL hereby demands trial by jury on all the issues so triable.

Dated: October 31, 2011.

PILLSBURY WINTHROP SHAW PITTMAN LLP  
REYNOLD L. SIEMENS #177956  
Email: [reynold.siemens@pillsburylaw.com](mailto:reynold.siemens@pillsburylaw.com)  
725 South Figueroa Street, Suite 2800  
Los Angeles, CA 90017-5406

PILLSBURY WINTHROP SHAW PITTMAN LLP  
BRUCE A. ERICSON #76342  
Email: [bruce.ericson@pillsburylaw.com](mailto:bruce.ericson@pillsburylaw.com)  
MARLEY DEGNER #251923  
Email: [marley.degner@pillsburylaw.com](mailto:marley.degner@pillsburylaw.com)  
50 Fremont Street, Post Office Box 7880  
San Francisco, CA 94120-7880

By /s/ Bruce A. Ericson  
Bruce A. Ericson

Attorneys for Defendant  
ROBERT JOHN BURRELL